

BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation  
Filed Against:

Case No.: 6531

**PAUL EDWARD BURKE**  
P.O. Box 1484  
Tecate, CA 91980

**DEFAULT DECISION  
AND ORDER**

Vocational Nurse License No. VN 113772

Respondent.

Paul Edward Burke ("Respondent") was served Petition to Revoke Probation No. 6679; Statement to Respondent; Notice of Defense form; copies of Government Code sections 11507.5, 11507.6 and 11507.7; and Request for Discovery by both first class and certified mail on September 8, 2008 at his address of record as provided in sections 11503 and 11505 of the Government Code of the State of California.

Respondent failed to file a Notice of Defense within the time specified in Government Code section 11506.

The Bureau of Vocational Nursing and Psychiatric Technicians ("Bureau") has determined that Respondent has waived his rights to a hearing to contest the merits of the Petition to Revoke Probation and that the Bureau will take action on Petition to Revoke Probation without a hearing, pursuant to Government Code section 11520.

The Bureau makes the following findings of fact:

**FINDINGS OF FACT**

1. Teresa Bello-Jones, J.D., M.S.N., R.N., made and filed the Petition to Revoke Probation solely in her capacity as the Bureau's Executive Officer.

2. On December 30, 1982, the Bureau issued Vocational Nurse License Number VN 113772 to Respondent. Said license will expire on May 31, 2009, unless renewed.

3. Pursuant to Business and Professions Code sections 101.1(b) and 150, the Department of Consumer Affairs has succeeded to and is vested with all duties, powers, purposes,

responsibilities and jurisdiction not otherwise repealed or made inoperative of the Bureau and its executive officer; that the department is under the control of the Director of Consumer Affairs.

4. Pursuant to Business and Professions Code section 2875, the Bureau may discipline any licensed vocational nurse for any reason provided in Article 3 of the Vocational Nursing Practice Act.

5. Pursuant to Business and Professions Code section 118(b), the expiration of a license shall not deprive the Bureau of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated. Under Business and Professions Code section 2892.1, the Bureau may renew an expired license at any time within four years after the expiration.

6. Respondent has subjected his probation to revocation in that Respondent failed to comply with the terms and conditions of the Probation Program established by the Bureau. Respondent failed to comply with probation terms #2, #5, #7, #8, #9, #13, #14, #16, and #19, as described in Petition to Revoke Probation No. 6531, a copy of which is attached as Exhibit "I" and incorporated by reference.

#### **DETERMINATION OF ISSUES**

Based on the foregoing Findings of Fact, Respondent has subjected his probation to revocation for failure to comply with the terms and conditions of the Probation Program established by the Bureau.

#### **LOCATION OF RECORD**

The record on which this Default Decision is based is located at the Sacramento office of the Bureau of Vocational Nursing and Psychiatric Technicians.

#### **ORDER**

**WHEREFORE**, the Bureau of Vocational Nursing and Psychiatric Technicians makes the following order:

Vocational Nurse License Number VN 113772 authorizing Respondent to act as a vocational nurse is hereby revoked.

Respondent shall have the right to petition for reinstatement of the aforesaid license

1 pursuant to the provision of section 2878.7(a)(1) of the Business and Professions Code.

2 Respondent shall not be deprived of making any further showing by way of  
3 mitigation; however, such showing must be made directly to the Bureau of Vocational Nursing and  
4 Psychiatric Technicians, 2535 Capitol Oaks Drive, Suite 205, Sacramento, California, 95833 prior to  
5 the effective date of this Decision.

6 This Default Decision shall become effective on February 4, 2009

7 Dated and signed December 23, 2008

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10 P. J. Harris  
11 PATRICIA HARRIS  
12 Deputy Director, Board/Bureau Support  
13 Department of Consumer Affairs  
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27 Attachments: Exhibit "1", Petition to Revoke Probation No. 6531 and Declaration of Service  
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Exhibit "1"  
Petition to Revoke Probation No. 6531 and Declaration of Service

SEP 08 2008

**Board of Vocational Nursing  
and Psychiatric Technicians**

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of the State of California  
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Attorneys for Complainant

**BEFORE THE  
DEPARTMENT OF CONSUMER AFFAIRS  
FOR THE BUREAU OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation  
Against:

**PAUL EDWARD BURKE**  
P.O. Box 1484  
Tecate, California 91980

Vocational Nurse License No. VN 113772

Respondent.

Case No. 6531

**PETITION TO REVOKE  
PROBATION**

Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

**PARTIES**

1. Complainant brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Bureau of Vocational Nursing and Psychiatric Technicians ("Bureau"), Department of Consumer Affairs.

2. On or about December 30, 1982, the Board issued Vocational Nurse License No. VN 113772 to Paul Edward Burke ("Respondent"). The license will expire on May 31, 2009, unless renewed.

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1 If during the period of probation, an accusation or petition to revoke has been filed  
2 against the Respondent's license or the Attorney General's Office has been  
3 requested to prepare an accusation or petition to revoke probation against the  
4 Respondent's license, the probationary period shall automatically be extended and  
5 shall not expire until the accusation or petition has been acted upon by the Board.  
6 Upon successful completion of probation, the Respondent's license will be fully  
7 restored.

8 8. Respondent has violated the Probation Program, as set forth in the  
9 following paragraphs:

10 **FIRST CAUSE TO REVOKE PROBATION**

11 **(Failure to Comply with the Board's Probation Program - Quarterly Reports)**

12 9. Condition 2 of the terms and conditions of probation contained in the  
13 Decision and Order in Case No. 6531, provides:

14 Respondent shall fully comply with terms and conditions of the probation  
15 established by the Board and shall cooperate with the representatives of the Board  
16 in its monitoring and investigation of the Respondent's compliance with the  
17 Probation Program. Respondent shall submit quarterly reports, under penalty of  
18 perjury, in a form required by the Board. The reports shall certify and document  
19 compliance with all the conditions of probation.

20 10. Respondent's probation is subject to revocation for failing to comply with  
21 Condition 2, referenced above, in that Respondent failed to submit the following quarterly  
22 reports:

<u>Reporting Period</u>	<u>Due Date</u>
July - September 2004	October 7, 2004
October - December 2004	January 7, 2005
January - March 2005	April 7, 2005
April - June 2005	July 7, 2005
July - September 2005	October 7, 2005
October - December 2005	January 7, 2006
January - March 2006	April 7, 2006
April - June 2006	July 7, 2006
July - September 2006	October 7, 2006
October - December 2006	January 7, 2007
January - March 2007	April 7, 2007
April - June 2007	July 7, 2007
July - September 2007	October 7, 2007
October - December 2007	January 7, 2008
January - March 2008	April 7, 2008
April - June 2008	July 7, 2008

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1                                   **SECOND CAUSE TO REVOKE PROBATION**

2                   **(Failure to Comply with the Board's Probation Program - Notification to Employers)**

3                   11.     Condition 5 of the terms and conditions of probation contained in the  
4     Decision and Order in Case No. 6531, states:

5                   When currently employed or applying for employment in any capacity in  
6     any health care profession, Respondent shall notify his employer of the  
7     probationary status of Respondent's license. This notification to the Respondent's  
8     current health care employer shall occur no later than the effective date of the  
9     Decision. Respondent shall notify any prospective health care employer of his  
10    probationary status with the Board prior to accepting such employment. This  
11    notification shall be by providing the employer or prospective employer with a  
12    copy of the Board's Accusation and Disciplinary Decision.

13                  The Health Care Profession includes, but is not limited to: Licensed  
14    Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant,  
15    Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home  
16    Health Aide, and all other ancillary technical health care positions.

17                  Respondent shall cause each health care employer to submit quarterly  
18    reports to the Board. The reports shall be on a form provided by the Board, shall  
19    include a performance evaluation and such other information as may be required  
20    by the Board.

21                  Respondent shall notify the Board, in writing, within five (5) days of any  
22    change in employment status. Respondent shall notify the Board, in writing, if he  
23    is terminated from any nursing or health care related employment with a full  
24    explanation of the circumstances surrounding the termination.

25                  12.     Respondent's probation is subject to revocation for failing to comply with  
26    Condition 5, referenced above, in that Respondent failed to notify his employer, AccentCare  
27    Home Health of California Inc., of the probationary status of his vocational nursing license.

28                               **THIRD CAUSE TO REVOKE PROBATION**

**(Failure to Comply with the Board's Probation Program -  
                  Employment Requirements and Limitations)**

                  13.     Condition 7 of the terms and conditions of probation contained in the  
Decision and Order in Case No. 6531, states:

                  During probation, Respondent shall work in his licensed capacity in the  
State of California. This practice shall consist of no less than six (6) continuous  
months and of no less than twenty (20) hours per week.

                  While on probation, Respondent shall not work for a nurses' registry other  
than Maxim Health Care Services or in any private duty position, a temporary  
nurse placement agency, as a faculty member in an accredited or approved school



1 of nursing, or as an instructor in a Board approved continuing education course  
2 except as approved, in writing, by the Board. Respondent shall work only on a  
3 regularly assigned, identified and predetermined work site(s) and shall not work in  
4 a float capacity except as approved, in writing, by the Board.

5 14. Respondent's probation is subject to revocation for failing to comply with  
6 Condition 7, referenced above, in that Respondent failed to work in his licensed capacity in the  
7 State of California for a minimum of six (6) continuous months and of no less than twenty (20)  
8 hours per week during his five (5) year probation period. Respondent only worked a total of five  
9 (5) continuous months.

#### 10 **FOURTH CAUSE TO REVOKE PROBATION**

##### 11 **(Failure to Comply with the Board's Probation Program - 12 Supervision Requirements)**

13 15. Condition 8 of the terms and conditions of probation contained in the  
14 Decision and Order in Case No. 6531, states:

15 Respondent shall obtain prior approval from the Board, before  
16 commencing any employment, regarding the level of supervision provided to  
17 Respondent while employed as a licensed vocational nurse or psychiatric  
18 technician.

19 Respondent shall not function as a charge nurse (i.e., work in any  
20 healthcare setting as the person who oversees or directs licensed vocational  
21 nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive  
22 personnel) or supervising psychiatric technician during the period of probation  
23 except as approved, in writing, by the Board.

24 16. Respondent's probation is subject to revocation for failing to comply with  
25 Condition 8, referenced above, in that Respondent failed to obtain the Boards' approval of the  
26 level of supervision to be provided, prior to the commencement of employment, while employed  
27 by AccentCare Home Health of California, Inc.

#### 28 **FIFTH CAUSE TO REVOKE PROBATION**

##### **(Failure to Comply with the Board's Probation Program - Completion of Educational Course(s))**

17. Condition 9 of the terms and conditions of probation contained in the  
Decision and Order in Case No. 6531, states:

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Respondent, at his own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation; or Respondent shall be suspended from practice, until he has enrolled in and has successfully completed the specified coursework.

The coursework shall be in addition to that required for license renewal. The Board shall notify the Respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Respondent shall cause the instructor to furnish proof to the Board within thirty (30) days of course completion.

18. Respondent's probation is subject to revocation for failing to comply with Condition 9, referenced above, in that Respondent failed to submit a written plan or proof of completion of the assigned coursework, *Law and Ethics* and *Substance Abuse*, as directed by the Board.

#### **SIXTH CAUSE TO REVOKE PROBATION**

##### **(Failure to Comply with the Board's Probation Program - Psychological Evaluation)**

19. Condition 13 of the terms and conditions of probation contained in the Decision and Order in Case No. 6531, states:

Within sixty (60) days of the effective date of the Decision, Respondent shall submit to a psychiatric/psychological evaluation. The evaluation shall be performed by a psychiatrist licensed in California and Board certified in psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining Respondent's current mental, psychological, and emotional fitness to perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Board's Disciplinary Order prior the evaluation. Cost of such evaluation shall be paid by Respondent.

Respondent shall cause the evaluator to submit to the Board a written psychological report concerning Respondent's status and progress as well as such other information as may be requested by the Board. This report shall be submitted within ninety (90) days from the effective date of the Decision.

If the evaluator finds that Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Board, in writing, within five (5) working days. The Board shall notify Respondent in writing of the evaluator's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of

Respondent's fitness to practice safely and has so notified Respondent.  
Respondent shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required, Respondent shall participate in a therapeutic program at the Board's discretion. Cost of such therapy shall be paid by Respondent.

20. Respondent's probation is subject to revocation for failing to comply with Condition 13, referenced above, in that Respondent failed to undergo a psychological evaluation to determine his mental, psychological, and emotional fitness to perform all professional duties with safety to himself and to the public within sixty (60) days of the effective date of the Decision and Order. Respondent also failed to submit an initial evaluation or report.

#### **SEVENTH CAUSE TO REVOKE PROBATION**

##### **(Failure to Comply with the Board's Probation Program - Psychotherapy)**

21. Condition 14 of the terms and conditions of probation contained in the Decision and Order in Case No. 6531, states:

Within sixty (60) days of the effective date of the Decision, Respondent shall submit to the Board the name of one or more proposed therapists for prior approval. Respondent shall participate in ongoing psychotherapy with a California licensed or legally registered mental health professional who has been approved by the Board. Upon approval by the Board, Respondent shall commence psychotherapy. Respondent shall provide the therapist with a copy of the Board's Disciplinary Order no later than the first counseling session. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy shall be paid by Respondent.

Respondent shall cause the therapist to submit to the Board a written report concerning Respondent's psychotherapy status and progress as well as such other information as may be requested by the Board. The initial psychotherapy report shall be submitted within ninety (90) days from the effective date of the Decision. Respondent shall cause the therapist to submit quarterly written reports to the Board concerning Respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the Board.

If the therapist finds that Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the therapist shall notify the Board, in writing, within five (5) working days. The Board shall notify Respondent in writing of the therapist's determination of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of

1 Respondent's fitness to practice safely and has so notified Respondent.  
2 Respondent shall document compliance with this condition in the manner required  
3 by the Board.

4 22. Respondent's probation is subject to revocation for failing to comply with  
5 Condition 14, referenced above, in that Respondent failed to participate in ongoing  
6 psychotherapy to monitor his fitness to practice and document his progress in treatment.  
7 Respondent failed to arrange for the therapist to submit quarterly progress reports to the Board.

### 8 **EIGHTH CAUSE TO REVOKE PROBATION**

#### 9 **(Failure to Comply with the Board's Probation Program - 10 Chemical Dependency Support/Recovery Groups)**

11 23. Condition 16 of the terms and conditions of probation contained in the  
12 Decision and Order in Case No. 6531, states:

13 Within five (5) days of the effective date of the Decision, Respondent shall  
14 begin attendance at a chemical dependency support group (e.g. Alcoholics  
15 Anonymous, Narcotics Anonymous, Nurse Support Group). Verified  
16 documentation of attendance shall be submitted by Respondent with each  
17 quarterly report. Respondent shall continue attendance in such a group for the  
18 duration of probation.

19 24. Respondent's probation is subject to revocation for failing to comply with  
20 Condition 16, referenced above, in that Respondent failed to submit verification of his attendance  
21 at a chemical dependency support group during his probation. Respondent only submitted proof  
22 of attendance for the following periods:

23 December 27, 2003 - January 5, 2004  
24 September 27, 2007 - November 15, 2007

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1 **NINTH CAUSE TO REVOKE PROBATION**

2 **(Failure to Comply with the Board's Probation Program -**  
3 **Submit Biological Fluid Samples)**

4 25. Condition 19 of the terms and conditions of probation contained in the  
5 Decision and Order in Case No. 6531, states:

6 Respondent shall immediately submit to biological fluid testing, at  
7 Respondent's cost, upon request by the Board or its designee. There will be no  
8 confidentiality in test results; positive test results will be immediately reported to  
9 the Board and the Respondent's current employer.

10 26. Respondent's probation is subject to revocation for failing to comply with  
11 Condition 19, referenced above, in that Respondent failed to submit to random screenings on a  
12 regular basis.

13 **PRAYER**

14 **WHEREFORE**, Complainant requests that a hearing be held on the matters  
15 herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

16 1. Revoking the probation that was granted by the Board of Vocational  
17 Nursing and Psychiatric Technicians in Case No. 6531, and reimposing the disciplinary order  
18 that was stayed thereby revoking Vocational Nurse License Number VN 113772, issued to Paul  
19 Edward Burke; and,

20 2. Taking such other and further action as deemed necessary and proper.

21 DATED: September 8, 2008.



22 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
23 Executive Officer  
24 Bureau of Vocational Nursing and Psychiatric Technicians  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant  
28

SD2008801250

Petition.Revoke (kdg) 8/5/08

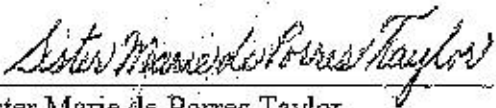
**Exhibit A**

**Decision and Order**

**Board of Vocational Nursing and Psychiatric Technicians Case No. 6531**

**DECISION AND ORDER  
OF THE BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS**

The foregoing Stipulation in Settlement, in Case No. 6531, is hereby adopted as the Order of the Board of Vocational Nursing and Psychiatric Technicians for the State of California on this 25<sup>th</sup> day of November, 2003. This Decision and Order shall become effective on the 25<sup>th</sup> day of December, 2003.

  
Sister Marie de Porres Taylor  
President

1 BILL LOCKYER, Attorney General  
of the State of California  
2 MARGARET A. LAFKO, State Bar No. 105921  
Supervising Deputy Attorney General  
3 Attorneys for Complainant

4 KEVIN GEOGHEGAN  
Senior Legal Analyst  
5 California Department of Justice  
110 West "A" Street, Suite 1100  
6 P.O. Box 85266  
San Diego, CA 92186-5266  
7 Telephone: (619) 645-3033  
Facsimile: (619) 645-2061  
8

9  
10 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 6531

13 PAUL E. BURKE,

OAH No. L-20003030069

14 Respondent.

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15  
16  
17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
19 above-entitled proceedings that the following matters are true:  
20

21 **PARTIES**

22 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) is the Executive  
23 Officer of the Board of Vocational Nursing and Psychiatric Technicians. She brought this action  
24 solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General  
25 of the State of California, by Margaret A. Lafko, Supervising Deputy Attorney General.

26 2. Respondent PAUL E. BURKE (Respondent) is represented in this  
27 proceeding by attorney Dan Bacal, Esq., whose address is 275 E Douglas Avenue, Suite 114, El  
28 Cajon, CA 92020.



1                   3.     On or about December 30, 1982, the Board of Vocational Nursing and  
2     Psychiatric Technicians issued Vocational Nurse License No. VN 113772 to PAUL E. BURKE  
3     (Respondent). The License was in full force and effect at all times relevant to the charges  
4     brought in Accusation No. 6531 and will expire on May 31, 2005, unless renewed.

5                                   JURISDICTION

6                   4.     Accusation No. 6531 was filed before the Board of Vocational Nursing  
7     and Psychiatric Technicians (Board), Department of Consumer Affairs, and is currently pending  
8     against Respondent. The Accusation and all other statutorily required documents were properly  
9     served on Respondent on January 24, 2003. Respondent timely filed his Notice of Defense  
10    contesting the Accusation. A copy of Accusation No. 6531 is attached as exhibit A and  
11    incorporated herein by reference.

12                                   ADVISEMENT AND WAIVERS

13                   5.     Respondent has carefully read, fully discussed with counsel, and  
14    understands the charges and allegations in Accusation No. 6531. Respondent has also carefully  
15    read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
16    Disciplinary Order.

17                   6.     Respondent is fully aware of his legal rights in this matter, including the  
18    right to a hearing on the charges and allegations in the Accusation; the right to be represented by  
19    counsel at his own expense; the right to confront and cross-examine the witnesses against him;  
20    the right to present evidence and to testify on his own behalf; the right to the issuance of  
21    subpoenas to compel the attendance of witnesses and the production of documents; the right to  
22    reconsideration and court review of an adverse decision; and all other rights accorded by the  
23    California Administrative Procedure Act and other applicable laws.

24                   7.     Respondent voluntarily, knowingly, and intelligently waives and gives up  
25    each and every right set forth above.

26                                   CULPABILITY

27                   8.     Respondent admits the truth of each and every charge and allegation in  
28    Accusation No. 6531.

1                   9.     Respondent agrees that his Vocational Nurse License is subject to  
2 discipline and agrees to be bound by the Board's imposition of discipline as set forth in the  
3 Disciplinary Order below.

4                                   RESERVATION

5                   10.    The admissions made by Respondent herein are only for the purposes of  
6 this proceeding, or any other proceedings in which the Board of Vocational Nursing and  
7 Psychiatric Technicians or other professional licensing agency is involved, and shall not be  
8 admissible in any other criminal or civil proceeding.

9                                   CONTINGENCY

10                  11.    This stipulation shall be subject to approval by the Board of Vocational  
11 Nursing and Psychiatric Technicians. Respondent understands and agrees that counsel for  
12 Complainant and the staff of the Board of Vocational Nursing and Psychiatric Technicians may  
13 communicate directly with the Board regarding this stipulation and settlement, without notice to  
14 or participation by Respondent or his counsel. By signing the stipulation, Respondent  
15 understands and agrees that he may not withdraw his agreement or seek to rescind the  
16 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this  
17 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of  
18 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between  
19 the parties, and the Board shall not be disqualified from further action by having considered this  
20 matter.

21                  12.    The parties understand and agree that facsimile copies of this Stipulated  
22 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
23 force and effect as the originals.

24                  13.    In consideration of the foregoing admissions and stipulations, the parties  
25 agree that the Board may, without further notice or formal proceeding, issue and enter the  
26 following Disciplinary Order:

27 ///

28 ///

## **DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Vocational Nurse License No. VN 113772 issued to Respondent PAUL E. BURKE is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the Board within five (5) days of occurrence. To ensure compliance with this term, respondent shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Board within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprint cards were already submitted by Respondent as part of his licensure application process effective July 1, 1996. Respondent shall also submit a recent 2" x 2" photograph of himself within thirty (30) days of the effective date of the decision.

2. **Compliance With Probation Program And Quarterly Report Requirements.** Respondent shall fully comply with terms and conditions of the probation established by the Board and shall cooperate with the representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Board. The reports shall certify and document compliance with all the conditions of probation.

3. **Notification of Address And Telephone Number Change(s).** Respondent shall notify the Board, in writing, within five (5) days of a change of residence or mailing address, of his new address and any change in his work and/or home telephone numbers.

4. **Notification of Residency or Practice Outside of State.** Respondent shall notify the Board, in writing, within five (5) days, if he leaves California to reside or practice in another state. (The Board is aware of Respondent's current residence in Tecate, Mexico.)

1 Respondent shall notify the Board, in writing, within five (5) days, upon his return  
2 to California.

3 The period of probation shall not run during the time Respondent is practicing  
4 outside California.

5 5. **Notification to Employer(s).** When currently employed or applying for  
6 employment in any capacity in any health care profession, Respondent shall notify his employer  
7 of the probationary status of Respondent's license. This notification to the Respondent's current  
8 health care employer shall occur no later than the effective date of the Decision. Respondent  
9 shall notify any prospective health care employer of his probationary status with the Board prior  
10 to accepting such employment. This notification shall be by providing the employer or  
11 prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

12 The Health Care Profession includes, but is not limited to: Licensed Vocational  
13 Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency  
14 Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary  
15 technical health care positions.

16 Respondent shall cause each health care employer to submit quarterly reports to  
17 the Board. The reports shall be on a form provided by the Board, shall include a performance  
18 evaluation and such other information as may be required by the Board.

19 Respondent shall notify the Board, in writing, within five (5) days of any change  
20 in employment status. Respondent shall notify the Board, in writing, if he is terminated from  
21 any nursing or health care related employment with a full explanation of the circumstances  
22 surrounding the termination.

23 6. **Interviews/meetings With Board Representative(s).** Respondent,  
24 during the period of probation, shall appear in person at interviews/meetings as directed by the  
25 Board, or its designated representatives.

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1                   7.     **Employment Requirements And Limitations.** During probation,  
2 Respondent shall work in his licensed capacity in the State of California. This practice shall  
3 consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

4                   While on probation, Respondent shall not work for any nurses' registry other than  
5 Maxim Health Care Services or in any private duty position, a temporary nurse placement  
6 agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in  
7 a Board approved continuing education course except as approved, in writing, by the Board.  
8 Respondent shall work only on a regularly assigned, identified and predetermined work site(s)  
9 and shall not work in a float capacity except as approved, in writing, by the Board.

10                  8.     **Supervision Requirements.** Respondent shall obtain prior approval from  
11 the Board, before commencing any employment, regarding the level of supervision provided to  
12 Respondent while employed as a licensed vocational nurse or psychiatric technician.

13                  Respondent shall not function as a charge nurse (i.e., work in any healthcare  
14 setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians,  
15 certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric  
16 technician during the period of probation except as approved, in writing, by the Board.

17                  9.     **Completion of Educational Course(s).** Respondent, at his own expense,  
18 shall enroll and successfully complete a course(s) substantially related to the violation(s) no later  
19 than the end of the first year of probation; or Respondent shall be suspended from practice, until  
20 he has enrolled in and has successfully completed the specified coursework.

21                  The coursework shall be in addition to that required for license renewal. The  
22 Board shall notify Respondent of the course content and number of contact hours required.  
23 Within thirty (30) days of the Board's written notification of assigned coursework, Respondent  
24 shall submit a written plan to comply with this requirement. The Board shall approve such plan  
25 prior to enrollment in any course of study.

26                  Upon successful completion of the course, Respondent shall cause the instructor  
27 to furnish proof to the Board within thirty (30) days of course completion.

28 ///

1           10.   **Maintenance of Valid License.** Respondent shall, at all times while on  
2 probation, maintain an active current license with the Board, including any period during which  
3 suspension or probation is tolled.

4           Should respondent's license, by operation of law or otherwise, expire, upon  
5 renewal or reinstatement respondent's license shall be subject to any and all terms of this  
6 probation not previously satisfied.

7           11.   **Cost Recovery Requirements.** Where an order for recovery of costs is  
8 made, Respondent shall make timely payment as directed in the Board's Decision pursuant to  
9 Business and Professions Code Section 125.3. Failure to make payments in accordance with any  
10 formal agreement entered into with the Board or pursuant to any Decision by the Board shall be  
11 considered a violation of probation.

12           The Board may conditionally renew or reinstate, for a maximum of one year, the  
13 license of any respondent who demonstrates financial hardship. Respondent shall enter into a  
14 formal agreement with the Board to reimburse the unpaid costs within that one year period.

15           Except as provided above, the Board shall not renew or reinstate the license of any  
16 Respondent who has failed to pay all the costs as directed in a Decision.

17           12.   **Violation of Probation.** If Respondent violates the conditions of his  
18 probation, the Board after giving Respondent notice and an opportunity to be heard, may set  
19 aside the stay order and impose the stayed discipline (revocation) of the Respondent's license. If  
20 during the period of probation, an accusation or petition to revoke has been filed against the  
21 Respondent's license or the Attorney General's Office has been requested to prepare an  
22 accusation or petition to revoke probation against the Respondent's license, the probationary  
23 period shall automatically be extended and shall not expire until the accusation or petition has  
24 been acted upon by the Board. Upon successful completion of probation, the Respondent's  
25 license will be fully restored.

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1                   13.     **Psychological Evaluation.** Within sixty (60) days of the effective date of  
2 the Decision, Respondent shall submit to a psychiatric/psychological evaluation. The evaluation  
3 shall be performed by a psychiatrist licensed in California and Board certified in psychiatry, or by  
4 a clinical psychologist licensed in California. This evaluation shall be for the purpose of  
5 determining Respondent's current mental, psychological and emotional fitness to perform all  
6 professional duties with safety to self and to the public. Respondent shall provide the evaluator  
7 with a copy of the Board's Disciplinary Order prior to the evaluation. Cost of such evaluation  
8 shall be paid by Respondent.

9                   Respondent shall cause the evaluator to submit to the Board a written  
10 psychological report concerning Respondent's status and progress as well as such other  
11 information as may be requested by the Board. This report shall be submitted within ninety (90)  
12 days from the effective date of the Decision.

13                   If the evaluator finds that Respondent is not psychologically fit to practice safely,  
14 or can only practice with restrictions, the evaluator shall notify the Board, in writing, within five  
15 (5) working days. The Board shall notify Respondent in writing of the evaluator's determination  
16 of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a  
17 condition of probation. Respondent shall comply with this condition until the Board is satisfied  
18 of respondent's fitness to practice safely and has so notified Respondent. Respondent shall  
19 document compliance in the manner required by the Board.

20                   If the evaluator finds that psychotherapy is required, Respondent shall participate  
21 in a therapeutic program at the Board's discretion. Cost of such therapy shall be paid by  
22 Respondent.

23                   14.     **Psychotherapy.** Within sixty (60) days of the effective date of the  
24 Decision, Respondent shall submit to the Board the name of one or more proposed therapists for  
25 prior approval. Respondent shall participate in ongoing psychotherapy with a California licensed  
26 or legally registered mental health professional who has been approved by the Board. Upon  
27 approval by the Board, Respondent shall commence psychotherapy. Respondent shall provide  
28 the therapist with a copy of the Board's Disciplinary Order no later than the first counseling

1 session. Counseling shall be at least once a week unless otherwise determined by the Board.  
2 Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy shall  
3 be paid by Respondent.

4 Respondent shall cause the therapist to submit to the Board a written report  
5 concerning Respondent's psychotherapy status and progress as well as such other information as  
6 may be requested by the Board. The initial psychotherapy report shall be submitted within ninety  
7 (90) days from the effective date of the Decision. Respondent shall cause the therapist to submit  
8 quarterly written reports to the Board concerning Respondent's fitness to practice, progress in  
9 treatment and to provide such other information as may be required by the Board.

10 If the therapist finds that Respondent is not psychologically fit to practice safely,  
11 or can only practice with restrictions, the therapist shall notify the Board, in writing, within five  
12 (5) working days. The Board shall notify Respondent in writing of the therapist's determination  
13 of unfitness to practice and shall order Respondent to cease or restrict licensed activities as a  
14 condition of probation. Respondent shall comply with this condition until the Board is satisfied  
15 of respondent's fitness to practice safely and has so notified Respondent. Respondent shall  
16 document compliance with this condition in the manner required by the Board.

17 15. **Rehabilitation Program.** Within thirty (30) days of the effective date of  
18 the Decision, Respondent shall enter a rehabilitation and monitoring program specified by the  
19 Board. Respondent shall successfully complete such treatment contract as may be recommended  
20 by the program and approved by the Board.

21 Components of the treatment contract shall be relevant to the violation and to the  
22 respondent's current status in recovery or rehabilitation. The components may include, but are  
23 not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention  
24 from drugs and alcohol, use of work site monitors, participation in chemical dependency  
25 rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other  
26 appropriate rehabilitation or monitoring programs. The cost for participation in this program  
27 shall be paid by Respondent.

28 ///



1                   16.     **Chemical Dependency Support/recovery Groups.** Within five (5) days  
2 of the effective date of the Decision, Respondent shall begin attendance at a chemical  
3 dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support  
4 Group). Verified documentation of attendance shall be submitted by Respondent with each  
5 quarterly report. Respondent shall continue attendance in such a group for the duration of  
6 probation.

7                   17.     **Abstain From Controlled Substances.** Respondent shall completely  
8 abstain from the personal use or possession of controlled substances, as defined in the California  
9 Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of  
10 the Business and Professions Code, except when lawfully prescribed by a licensed practitioner  
11 for a bona fide illness.


12                  18.     **Abstain From Use of Alcohol.** Respondent shall completely abstain from  
13 the use of alcoholic beverages during the period of probation.

14                  19.     **Submit Biological Fluid Samples.** Respondent shall immediately submit  
15 to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There  
16 will be no confidentiality in test results; positive test results will be immediately reported to the  
17 Board and the Respondent's current employer.

18                                   ACCEPTANCE

19                  I have carefully read the above Stipulated Settlement and Disciplinary Order and  
20 have fully discussed it with my attorney, Dan Bacal, Esq.. I understand the stipulation and the  
21 effect it will have on my Vocational Nurse License. I enter into this Stipulated Settlement and  
22 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
23 Decision and Order of the Board of Vocational Nursing and Psychiatric Technicians.

24 DATED: 27 Aug -03

25  
26   
27 PAUL E. BURKE  
28 Respondent

1 I have read and fully discussed with Respondent PAUL E. BURKE the terms and  
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
3 Order. I approve its form and content.

4 DATED: 8/29/03

5  
6 

7 DAN BACAL, ESQ.  
8 Attorney for Respondent

9 ENDORSEMENT

10 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
11 submitted for consideration by the Board of Vocational Nursing and Psychiatric Technicians of  
12 the Department of Consumer Affairs.

13  
14 DATED: 9/23/03

15 BILL LOCKYER, Attorney General  
16 of the State of California

17 

18 MARGARET A. LAFKO  
19 Supervising Deputy Attorney General

20 Attorneys for Complainant

21 DOJ Docket/Matter ID Number: 03595110-SD2001AD0613  
22 BURKESETTLESTIP.WPD  
23  
24  
25  
26  
27  
28

1 BILL LOCKYER, Attorney General  
of the State of California  
2 RICHARD D. GARSKE, State Bar No. 50569  
Supervising Deputy Attorney General

3 Attorneys for Complainant

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9 Facsimile: (619) 645-2061

10  
11 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 6531

15 PAUL E. BURKE  
16 P.O. Box 1484  
Tecate, California 91980

**A C C U S A T I O N**

17 Vocational Nurse License No. VN 113772

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this  
22 Accusation solely in her official capacity as the Executive Officer of the Board of Vocational  
23 Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs.

24 **LICENSE INFORMATION**

25 2. On or about December 30, 1982, the Board of Vocational Nursing and  
26 Psychiatric Technicians issued Vocational Nurse License No. VN 113772 to PAUL E. BURKE  
27 (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to  
28 the charges brought herein and will expire on May 31, 2003, unless renewed.

1 RENEWAL APPLICATION

2 3. On or about June 1, 1999, the Board received a Renewal Application -  
3 Licensed Vocational Nurse from respondent. The application was certified as to its truth and  
4 accuracy by respondent on May 29, 1999.

5 STATUTORY PROVISIONS

6 4. Section 2875 of the Business and Professions Code (Code) provides, in  
7 pertinent part, that the Board may discipline the holder of a vocational nurse license for any  
8 reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice  
9 Act.

10 5. Section 118(b) of the Code provides, in pertinent part, that the expiration  
11 of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during  
12 the period within which the license may be renewed, restored, reissued or reinstated. Under  
13 section 2892.1 of the Code, the Board may renew an expired license at any time within four  
14 years after the expiration.

15 6. Section 2878 of the Code states:

16 "The Board may suspend or revoke a license issued under this chapter [the  
17 Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

18 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

19 "(1) Incompetence, or gross negligence in carrying out usual nursing functions.

20 "....

21 "(f) Conviction of a crime substantially related to the qualifications, functions,  
22 and duties of a licensed vocational nurse, in which event the record of the conviction shall be  
23 conclusive evidence of the conviction."

24 ///

25 ///

26 ///

27 ///

28 ///

1                   7.     Section 2878.5 of the Code states:

2                    "In addition to other acts constituting unprofessional conduct within the meaning  
3 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person  
4 licensed under this chapter to do any of the following:

5                    "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a  
6 licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or  
7 administer to another, any controlled substance as defined in Division 10 of the Health and  
8 Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of  
9 Chapter 9 of Division 2 of this code."

10                   "(b) Use of any controlled substance as defined in Division 10 of the Health and  
11 Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of  
12 Chapter 9 of Division 2 of this code, or alcoholic beverages, to an extent or in a manner  
13 dangerous or injurious to himself or herself, any other person, or the public, or to the extent that  
14 such use impairs his or her ability to conduct with safety to the public the practice authorized by  
15 his or her license.

16                   "(c) Be convicted of a criminal offense involving possession of any narcotic or  
17 dangerous drug, or the prescription, consumption, or self-administration of any of the substances  
18 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is  
19 conclusive evidence thereof."

20                   8.     Section 125.3 of the Code provides, in pertinent part, that the Board may  
21 request the administrative law judge to direct a licensee found to have committed a violation or  
22 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
23 and enforcement of the case.

24                                   FIRST CAUSE FOR DISCIPLINE

25   (Conviction)

26                   9.     Respondent has subjected his license to disciplinary action under section  
27 2878(f) of the Code in that on September 20, 1999, respondent was convicted by the court on his  
28 plea of guilty to violating Health & Safety Code section 11550(a) (under the influence of a drug)

1 and Vehicle Code section 23152(a) (driving under the influence of drugs) in the County of San  
2 Diego Superior Court, East County Division, Case No. C198057, entitled People v. Paul Edward  
3 Burke.

4 a. The circumstances of said crimes are that on or about May 26, 1999, while  
5 driving on a suspended license, respondent was stopped by the California Highway Patrol and  
6 was arrested and cited for driving under the influence of methamphetamine and for possession of  
7 marijuana while driving.

8 b. As a result of the conviction detailed in paragraph 9, above, respondent was  
9 given the opportunity to complete drug diversion (PC 1000) for count 1 (Health & Safety Code  
10 section 11550(a) (under the influence of a drug), and was placed on 5 years' summary probation  
11 for count 2 (driving under the influence of drugs). In addition, respondent was ordered to pay  
12 fines totaling \$1,830 and was restricted from driving for 3 months.

#### 13 SECOND CAUSE FOR DISCIPLINE

14 (Conviction)

15 10. Respondent has subjected his license to disciplinary action under section  
16 2878(f) of the Code in that on July 19, 1991, respondent was convicted by the court on his plea  
17 of guilty to violating Vehicle Code section 2800.2 (evading an officer with reckless driving) and  
18 Penal Code section 594(a) (vandalism) in the San Diego County Superior Court, Case No.  
19 ECR3841, entitled People v. Paul Edward Burke.

20 a. The circumstances of said crimes are that on or about February 13, 1991,  
21 respondent, while operating a motor vehicle and hearing a siren and seeing the flashing lights of  
22 an officer's vehicle, evaded the pursuing officer's vehicle with disregard for the safety of others.  
23 Additionally, on January 11, 1991, respondent damaged and destroyed the real and personal  
24 property of another valued at less than \$1,000.

25 b. On June 28, 1991, a hearing was held during which respondent was remanded  
26 into custody and sentencing was scheduled for July 19, 1991. According to court records, at the  
27 hearing of June 28, 1991, respondent addressed the court upon leaving the courtroom and stated,  
28 "F\_\_\_\_\_ the court." On June 19, 1991, respondent was sentenced to 365 days in custody, and

1 given 3 years formal probation. Respondent was also ordered to pay \$1,200 in fines and  
2 restitution.

3 THIRD CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct)

5 (Conviction of Criminal Offense Involving Controlled Substance)

6 10. Respondent has subjected his license to disciplinary action under section  
7 2878(a) of the Code on the grounds of unprofessional conduct as defined in section 2878.5(c) of  
8 that Code in that on September 20, 1999, he was convicted of a criminal offense involving the  
9 possession of a narcotic as set forth in paragraph 9.

10 FOURTH CAUSE FOR DISCIPLINE

11 (Self-administered a Controlled Substance)

12 11. Respondent has subjected his license to disciplinary action under section  
13 2878(a) of the Code on the grounds of unprofessional conduct as defined in section 2878.5(a) of  
14 that code in that on or about May 26, 1999, he self-administered amphetamine and marijuana,  
15 controlled substances, without lawful direction from a licensed physician and surgeon, dentist or  
16 podiatrist when he tested positive for the substances, as set forth in paragraph 9.

17 FIFTH CAUSE FOR DISCIPLINE

18 (Unprofessional Conduct)

19 12. Respondent has subjected his license to disciplinary action under section  
20 2878(a) of the Code on the grounds of unprofessional conduct in that on June 20 and 21, 2000,  
21 while employed with Staff Builders Home Health Care, San Diego, California, providing  
22 pediatric patients with home care, respondent failed to report for scheduled shifts on those days  
23 and failed to notify his employer of his absence.

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1 PRAYER

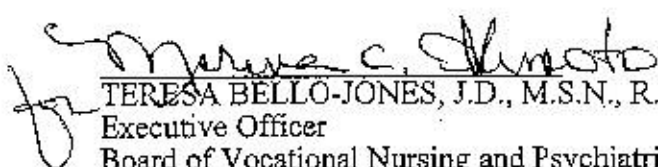
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric  
4 Technicians issue a decision:

5 1. Revoking or suspending Vocational Nurse License No. 113772, issued to  
6 PAUL E. BURKE;

7  
8 2. Ordering PAUL E. BURKE to pay the Board of Vocational Nursing and  
9 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,  
10 pursuant to Business and Professions Code section 125.3;

11 3. Taking such other and further action as deemed necessary and proper.

12 DATED: January 24, 2003

13  
14  
15   
16 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
17 Executive Officer  
18 Board of Vocational Nursing and Psychiatric Technicians  
19 Department of Consumer Affairs  
20 State of California  
21 Complainant  
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26